U.S. Senate Committee on Foreign Relations
Chairman John F. Kerry
Opening Statement For Hearing On U.S. Defense Trade Treaties
December 10, 2009

Chairman Kerry Opening Statement For U.S. Defense Trade Treaties Hearing

WASHINGTON, D.C.--Senate Foreign Relations Committee Chairman John Kerry (D-MA) delivered the following opening statement at a hearing on the proposed Defense Trade Cooperation Treaties with the United Kingdom and Australia:

Full text as prepared is below:

Today we meet to consider treaties with two of our closest allies, the United Kingdom and Australia, that would change how our country controls arms exports and shares military technology. The Committee first took testimony on these treaties in May of last year, and this will be the second hearing we devote to them.

Commercial exports of U.S. defense articles and know-how require a license from the State Department, as do later re-transfers to a third party or country. If an export or re-transfer is above a certain value, the Department must inform Congress prior to issuing a license. Congress has never enacted a resolution to block a proposed sale—but our authority to do so gives Congress a voice in transactions with significant implications for our national security.

America maintains arms export controls so as to keep our weapons and technology from falling into the wrong hands. We do not want American weapons to contribute to human rights abuses, fuel destabilizing regional conflicts, or be used against us or our allies. And we reject any arms deal that violates our international obligations.

Our arms export control system also imposes administrative burdens and delays, however, that hinder legitimate trade and defense cooperation – especially the intensive cooperation required for joint weapons development programs. Sometimes it makes sense to streamline the process. We have done this under existing law for many arms exports to Canada, a close ally whose export controls largely mirror our own.

We should do the same for the UK and Australia, which are every bit as close allies as Canada. We have important joint defense projects with both, and the overwhelming majority of all arms export license requests involving them are approved. Our countries' forces serve – and die – together in Afghanistan and elsewhere.

Australia and the UK's laws differ from ours, and neither country, for different reasons, can guarantee iron-clad control under its export control law over re-transfers of U.S. defense articles or technology to third or fourth parties. The UK's European Union treaty obligations, for example, prevent it from meeting the requirements of U.S. law for an exemption like Canada's.

So the treaties before us incorporate a new approach: For arms exports relating to an approved set of joint projects or operations, these treaties would allow all but the most sensitive U.S. arms and know-how to be exported without case-by-case State Department approval.

Within the UK and Australia, only government entities and jointly-approved private companies and facilities will have access to the weapons or know-how. And the UK or Australia will treat exports and transfers under the treaty not just as defense articles or defense services, but also as classified information. This means that British or Australian users will need a security clearance and will be bound by security standards applied to classified information. If the US export is improperly handled or diverted, they will face prosecution under UK or Australian national security laws, as well as export control laws.

The treaties leave many blanks to be filled in, and our Committee has pressed the executive branch to provide additional explanations. At last year's hearing, the State Department could only promise that draft regulations would be provided; then the Department of Justice warned the Committee that the initial State Department draft could imperil prosecutions of individuals or companies who violate the treaties' terms.

In the intervening year, some real progress has been made. The State Department produced draft regulations that reassured the Justice Department, which then told the Committee that implementing legislation would not be needed to enable them to pursue court action against violators.

On the basis of this progress, we are holding today's hearing; and I intend to move forward in drafting and passing a resolution of advice and consent to ratification. Nobody – including today's witnesses – knows exactly how this new approach will work in practice, but I believe that the political and national defense benefits of advancing these treaties outweigh the risks.

There will still be work to do after the Senate acts. The treaties unintentionally strip some of the authorities and protections concerning arms exports established by existing law – such as Congress's ability to stop a proposed transfer of U.S. defense articles to a third party outside of the treaties. We will need to remedy those faults, and I expect the executive branch to work with us in that effort.

But I see no need to hold up the treaties' entry into force while we enact the needed fixes. We should move ahead and trust that the good will we generate by acting on these treaties will help us work out the details over the coming year.

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